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court does not seem to consider the more extended provisions of the Washington Act a sufficient departure from the New York Act to animadvert thereon.<sup>9</sup> The status of an act which would award compensation irrespective of the source of the injury must therefore be deemed uncertain. Certainly a statute which covers every injury sustained on the plant of the employer is beyond the scope of Workmen's Compensation in its narrow sense. With the constitutionality of these statutes now definitely established, a broader application of the underlying principles would seem to be indicated in the direction of accident insurance. Certainly their practical administration will necessitate also a more stringent control by the state, over each industrial plant.

B. W.

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CONSTITUTIONAL LAW — MUNICIPAL CORPORATIONS — POLICE POWERS—PROHIBITION OF BILLBOARDS IN RESIDENTIAL DISTRICTS—A recent decision of the Supreme Court of the United States has determined that it is within the police power of a municipality to regulate the size, material, manner of construction and the place of erection of billboards as a special class of structure; and that such regulation does not deprive any person of his liberty or property without due process of law, or of the equal protection of the law,—at least so far as the Constitution is concerned.<sup>1</sup> In that case an ordinance of the city of Chicago made it unlawful to erect any billboard or signboard in any block on any public street in which one-half of the buildings on both sides of the street are used exclusively for residence purposes, without first obtaining the written consent of the owners of a majority of the frontage of the property on both sides of the street; and the Supreme Court held that such an ordinance was justifiable as a reasonable exercise of the police power of the municipality, and, as such, did not conflict with the Fourteenth Amendment. In the course of its opinion, the court points out that refuse of all descriptions frequently collects around and behind such structures, so that they become a menace to health; while they also jeopardize the safety and morality of the community by facilitating the start and spread of fires, and by affording a convenient concealment and shield for immoral practices, and for loiterers and criminals. For these reasons, say the court, billboards are to be considered as a class by themselves, as distinguished from buildings and fences. Thus the court justifies at least a partial prohibition of the erection, upon private property, of billboards, as such, without regard to their manner of construction.

<sup>9</sup> This particular feature of the act was not emphasized by counsel for the Mountain Timber Company.

<sup>1</sup> *Cusack v. Chicago*, 37 Sup. Ct. 190 (1917).

An examination of the decisions of the various state courts upon this question, indicates that this is a rather extreme position. Most of the state constitutions contain provisions similar to those of the Fourteenth Amendment, but the state courts generally have not been so liberal as the Supreme Court in the application of those provisions in cases relating to the regulation of billboards. One of the first decisions by a state court upon this question, and one which has been cited frequently since, is the case of *Crawford v. Topeka*.<sup>2</sup> In that case the court held that a municipality might regulate the erection of billboards upon private property so as to fully protect persons passing along the street; but that an ordinance providing that no person shall erect any billboard unless it is placed at such a distance from the sidewalk as shall exceed, by at least five feet, the height of such billboard, is an unreasonable regulation, not necessary for the safety of the public, and is therefore invalid as an exercise of the police power. This case refuses to recognize that there is any sound reason for discriminating between billboards, if properly and securely erected, and other structures, such as buildings and fences. Following the reasoning of this case, there have been a number of subsequent decisions by state courts which have held that the regulation of the size, location or material of billboards, as such, without including similar structures used for different purposes, is an unjust discrimination and is therefore illegal.<sup>3</sup> The same decisions also hold such regulation of billboards, without regard to whether they may be a menace to the public health, safety, or morals, is illegal, because it is not a valid exercise of the police power. Thus, in the case of *Bill Posting Co. v. Newburgh*,<sup>4</sup> an ordinance requiring all billboards in the city to be constructed of metal is declared invalid as an unreasonable exercise of the police power, in that many wooden billboards might be erected at such places that they could not possibly spread fire. But later, in the same jurisdiction, a municipality was permitted to prescribe definite fire limits within which the erection of wooden structures, particularly billboards, was prohibited;<sup>5</sup> and restrictions as to the height and solid space of skysigns were also allowed as a reasonable exercise of the police power.<sup>6</sup>

All of the decisions recognize the right of a municipality, as part of its police power, to regulate the erection of billboards in so far as reasonably necessary for the protection of the health, safety or morals of the public; but the courts have differed in their concep-

<sup>2</sup> 51 Kan. 756 (1893).

<sup>3</sup> *Curran Co. v. Denver*, 47 Col. 221 (1910); *Chicago v. Gunning System*, 214 Ill. 628 (1905); *Bill Posting Co. v. Atlantic City*, 71 N. J. L. 72 (1904); *Passaic v. Bill Posting Co.*, 72 N. J. L. 285 (1905); *State v. Whitlock*, 149 N. C. 542 (1908).

<sup>4</sup> 137 N. Y. Sup. 186 (1912); affirmed 138 N. Y. Sup. 1144 (1913).

<sup>5</sup> *People v. Miller*, 161 N. Y. App. 138 (1914).

<sup>6</sup> *People v. Ludwig*, 158 N. Y. Supp. 208 (1916).

tion as to what is a reasonably necessary regulation. In the case of *In re Wiltshire*,<sup>7</sup> the court decided that an ordinance, limiting the height of billboards on the ground to six feet was a reasonable regulation, though admittedly a close case. The court declared that it would take judicial notice of the fact that billboards are usually, if not invariably, cheap and flimsy affairs constructed of wood, and justified its decision on this ground. But this position was severely criticised in *Curran Co. v. Denver*<sup>8</sup> as "opposed to all the authorities, and erroneous in its logic and conclusions." All of the cases agree, however, that an ordinance providing that no billboard over a certain height should be erected without the consent of the common council, or of some administrative officer, is a valid exercise of the police power, because it is not an absolute prohibition of all billboards, but permits a discrimination based upon considerations of public safety.<sup>9</sup> But mere æsthetic or artistic considerations will never justify an exercise of the police power; and therefore it is universally held that an ordinance prohibiting the erection, on private property, of *all* billboards merely because they are unsightly or incongruous, or for any other reason, is invalid as an unreasonable exercise of the police power.<sup>10</sup> Similarly, the prohibition of the erection, on private property, of any sign or billboard which may be seen from a public park, is invalid as a restriction not prompted by any consideration of public health, safety or morals.<sup>11</sup> It has also been decided that an ordinance of a municipality in "dry" territory, prohibiting the display of liquor advertisements, was unreasonable, and therefore invalid,<sup>12</sup> although it would seem that if a community may prohibit the sale of liquor as a reasonable police regulation, it should also be able, under its police power, to prohibit advertisements designed to promote the sale of liquor.

Although a majority of the state courts have condemned ordinances whose regulatory provisions apply only to billboards or similar structures used for advertising purposes, a few jurisdictions have permitted such a classification; and in view of the recent Supreme Court decision, the latter would seem to be the better view. The theory upon which these cases proceed is that billboards and similar structures erected for the purpose of displaying advertisements are inherently different from a fence or a building. Generally, they are insecurely constructed and present a large surface to

<sup>7</sup> 103 Fed. 620 (1900).

<sup>8</sup> 47 Col. 221 (1910).

<sup>9</sup> *Whitmier v. Buffalo*, 118 Fed. 773 (1902); *Rochester v. West*, 164 N. Y. 510 (1900); *Gunning System v. Buffalo*, 75 N. Y. App. 31 (1902).

<sup>10</sup> *Varney v. Williams*, 155 Cal. 318 (1909); *Bryan v. Chester*, 212 Pa. St. 259 (1905).

<sup>11</sup> *Haller Sign Works v. Training School*, 249 Ill. 436 (1911); *Commonwealth v. Boston Adv. Co.*, 188 Mass. 348 (1905).

<sup>12</sup> *Haskell v. Howard*, 269 Ill. 550 (1915).

the wind; and, unlike a building, they possess no supporting walls, so that they are extremely susceptible to collapse. If located on the ground, access behind them is open, and they afford an excellent concealment for the commission of all forms of nuisances and immoral practices; and great quantities of rubbish and trash usually collect behind them, whereas a fence is designed to keep out intruders, and to prevent the other conditions to which billboards are so conducive. The leading case in support of this view in the state courts is *St. Louis Gunning Co. v. St. Louis*,<sup>13</sup> in which the regulation of the erection of billboards, as a distinct type of structure, is justified upon considerations of the health, safety and morals of the community; and this decision has been followed in at least four other jurisdictions.<sup>14</sup> The more recent decisions in all the jurisdictions seem to indicate that the growing complexity of our urban life is inclining the courts to allow greater liberality to municipalities in the application of their police power, so that in the future we may expect the courts to approve, not only more minute police regulations of billboards, but also the regulation of other subjects which have previously escaped the attention of legislators and laws.

E. L. H.

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CONSULS—LIMITATIONS ON POWER TO DEAL WITH PROPERTY RIGHTS OF THEIR NATIONALS—A consul is the commercial agent of a country residing in a foreign community, usually a seaport, whose duty it is to support the commercial intercourse of the state and especially of the individual citizens.<sup>1</sup> He is not entitled to represent his sovereign in a country where the sovereign has an ambassador, but "he has an undoubted right to interpose claims for the restitution of property belonging to the subjects of his own country."<sup>2</sup> The various officials of this service, consuls general, consular agents, *etc.*, are invested with the same powers and duties, and, though nominally different, the office of each is substantially the same as that of the other and the name is determined by the relative importance of the city or community to which the officer is assigned.<sup>3</sup> Limitations on the powers exercised by a consul are imposed by the regulations of his own government and of that to which he is sent,

<sup>13</sup> 235 Mo. 99 (1911).

<sup>14</sup> *Kansas City Gunning Co. v. Kansas City*, 144 S. W. 1099 (Mo. 1912); *State v. Staples*, 73 S. E. 112 (N. C. 1911); *Horton v. Old Colony Co.*, 36 R. I. 507 (1914); *Ex parte Savage*, 141 S. W. 244 (Tex. 1911).

<sup>1</sup> 3 Am. & Eng. Encyc. of Law, 764.

<sup>2</sup> Story, J., in *The Anne*, 3 Wheaton 435 (1818); see also *Robson v. The Huntress*, 2 Wall. Jr. 59 (1851), and *Gernon v. Cochran*, Fed. Cas. No. 5368 (1804).

<sup>3</sup> *Schunior v. Russell*, 83 Texas 83 (1892).